

SUMMARY ANALYSIS OF AMENDED BILL

Author: Ma Analyst: Deborah Barrett Bill Number: AB 129
 Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: May 4, 2009
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT:

Confidentiality/Taxpayer Communications

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED January 16, 2009, STILL APPLIES.

OTHER – See comments below.

SUMMARY

This bill would provide a taxpayer the same protections of confidentiality with respect to the tax advice given by any “federally authorized tax practitioner” as the taxpayer would have if the advising individual were an attorney for any noncriminal matter before the Franchise Tax Board (FTB) or the State Board of Equalization (BOE).

This bill would also provide similar protections for a taxpayer before the State Board of Equalization and the Employment Development Department that do not impact the department and are not discussed in this analysis.

SUMMARY OF AMENDMENTS

The May 4, 2009, amendments revised the definition of tax shelter that is excluded from the privilege communication and added clarifying language on the responsibility of a federally authorized tax practitioner to maintain the confidentiality of certain communications. The May 4, 2009, amendments resolved the “Implementation Considerations” identified in the department’s analysis of the bill as introduced January 16, 2009 and create a new “Technical Consideration” discussed below. The “This Bill,” “Implementation Consideration” and “Economic Impact” discussions are revised. The remainder of the department’s analysis of the bill as introduced January 16, 2009, still applies.

Board Position:

_____ S _____ NA _____ NP
 _____ SA _____ O _____ NAR
 _____ N _____ OUA _____ X PENDING

Legislative Director

Date

Brian Putler

06/05/09

POSITION

Pending.

THIS BILL

This bill would reinstate the provisions protecting the confidentiality of communications between a taxpayer and a federally authorized tax practitioner that were repealed January 1, 2009, and would make those provisions permanent. Specifically, this bill would provide that the privileged communications afforded between a client and an attorney would apply to communications regarding tax advice, with certain limits discussed below, between a taxpayer and any federally authorized tax practitioner to the extent that the communication would be considered a privileged communication if it were between a client and an attorney.

The bill's provisions would only apply in any noncriminal tax matter before FTB and would not be applicable to written communications between the tax practitioner and person in connection with promotion of the direct or indirect participation in any tax shelter. The bill would define tax shelters to mean a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of state income or franchise tax.

The bill also would provide definitions for the terms "federally authorized tax practitioner" and "tax advice".

The bill is specifically operative for communications made on or after the effective date of the act adding the bill's provisions.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not impact department programs or operations.

TECHNICAL CONSIDERATION

The language added on page 2, line 10, creates a legal obligation and duty to maintain confidentiality that is not properly codified within the Revenue and Taxation Code (RTC). Provisions of the RTC establish rules and requirements for tax-related matters and not the creation of a legal duty or obligation on a practitioner, which could provide the basis for a law suit. Such provisions are more appropriately placed in the Business and Professions Code where responsibilities of tax practitioners are delineated.

ECONOMIC IMPACTS

The provisions of this bill would not impact state income tax revenues.

If SB 401 (Wolk) and this bill were both enacted, an inconsistent definition of tax shelters would exist between the two enacted bills. This could cause disputes between taxpayers and the department in its efforts to curtail abusive tax avoidance transactions. If these circumstances were to develop, potential revenue consequences could be significant.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Deborah Barrett
(916) 845-4301
deborah.barrett@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375
jay_chamberlain@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov